

1 HOUSE BILL NO. 968
2 INTRODUCED BY A. REGIER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PARENTAL CONSULTATION REGARDING A
5 MINOR'S ABORTION; REVISING DEFINITIONS; REVISING CONSENT REQUIREMENTS; REVISING
6 IDENTIFICATION REQUIREMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 47-1-104,
7 50-20-501, 50-20-502, 50-20-503, 50-20-504, 50-20-505, AND 50-20-506, MCA; AND PROVIDING AN
8 EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 47-1-104, MCA, is amended to read:

13 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**
14 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender
15 services in all courts in this state. The system is supervised by the director.

16 (2) The director shall approve a strategic plan for service delivery and divide the state into not
17 more than 11 public defender regions. The director may establish a regional office to provide public defender
18 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
19 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
20 in 47-1-102.

21 (3) When a court orders the assignment of a public defender, the appropriate office shall
22 immediately assign a public defender qualified to provide the required services. The director shall establish
23 protocols to ensure that the offices make appropriate assignments in a timely manner.

24 (4) A court may order assignment of a public defender under this chapter in the following cases:

25 (a) in cases in which a person is entitled to assistance of counsel at public expense because of
26 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
27 follows:

28 (i) for a person charged with a felony or charged with a misdemeanor for which there is a

- 1 possibility of incarceration, as provided in 46-8-101;
- 2 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
3 provided in 40-6-119;
- 4 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
5 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
6 Child Welfare Act, as provided in 41-3-425;
- 7 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 8 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 9 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 10 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
11 disabled person to a residential facility, as provided in 53-20-112;
- 12 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
13 in 53-21-116;
- 14 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
15 provided in 53-24-302; and
- 16 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 17 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
18 regardless of the person's financial ability to retain private counsel, as follows:
- 19 (i) as provided for in 41-3-425;
- 20 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
21 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
22 Prosecution Act, as provided in 41-5-1607;
- 23 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
24 Juveniles, as provided in 41-6-101;
- 25 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
26 ~~Consent for Abortion Act of 2013~~ Consultation for Minor's Abortion Act of 2023, as provided in 50-20-509;
- 27 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
28 person to a residential facility, as provided in 53-20-112;

- 1 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 2 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
- 3 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 4 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
- 5 mental disorder of the ward, as provided in 72-5-322; and
- 6 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 7 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
- 8 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
- 9 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.
- 10 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
- 11 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
- 12 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
- 13 for the statewide public defender system and does not result in a conflict of interest."

14
15 **Section 2.** Section 50-20-501, MCA, is amended to read:

16 **"50-20-501. Short title.** This part may be cited as the "Parental ~~Consent~~ Consultation for Minor's
17 Abortion Act of ~~2013~~ 2023"."

18
19 **Section 3.** Section 50-20-502, MCA, is amended to read:

20 **"50-20-502. Legislative purpose and findings.** (1) The legislature finds that:

- 21 (a) immature minors often lack the ability to make fully informed choices that take into account
- 22 both immediate and long-range consequences;
- 23 (b) the medical, emotional, and psychological consequences of abortion are sometimes serious
- 24 and can be lasting, particularly when the patient is immature;
- 25 (c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom
- 26 of an abortion are not necessarily related;
- 27 (d) parents ordinarily possess information essential to a physician in the exercise of the physician's
- 28 best medical judgment concerning the minor;

1 (e) parents who are aware that their minor daughter has had an abortion may better ensure that
2 the daughter receives adequate medical care after the abortion; and

3 (f) parental consultation is usually desirable and in the best interests of the minor.

4 (2) The purpose of this part is to further the important and compelling state interests of:

5 (a) protecting minors against their own immaturity;

6 (b) fostering family unity and preserving the family as a viable social unit; and

7 (c) protecting the constitutional rights of parents to rear children who are members of their
8 household; ~~and~~

9 ~~(d) reducing teenage pregnancy and unnecessary abortion."~~

10

11 **Section 4.** Section 50-20-503, MCA, is amended to read:

12 **"50-20-503. Definitions.** As used in this part, unless the context requires otherwise, the following
13 definitions apply:

14 (1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or
15 deprivation of food and shelter.

16 (2) "Consent" means a notarized written statement obtained on a form and executed in the manner
17 prescribed by 50-20-505 that is signed by a parent or legal guardian of a minor and that declares that the minor
18 intends to seek an abortion and that the parent or legal guardian of the minor ~~consents to the abortion~~ has been
19 informed and consulted as required by 50-20-505.

20 (3) "Emancipated minor" means a person under 18 years of age who is or has been married or
21 who has been granted an order of limited emancipation by a court as provided in 41-1-503.

22 (4) "Medical emergency" means a condition that, on the basis of the good faith clinical judgment of
23 a physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate
24 the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay
25 in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

26 (5) "Minor" means a pregnant female under ~~48~~ 16 years of age who is not an emancipated minor.

27 (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian
28 on a minor.

1 (7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

2 (8) "Physician assistant" means a person licensed pursuant to Title 37, chapter 20, who provides
3 medical services under the supervision of a physician.

4 (9) "Sexual abuse" has the meaning provided in 41-3-102."
5

6 **Section 5.** Section 50-20-504, MCA, is amended to read:

7 **"50-20-504. Consent of parent or legal guardian required.** (1) Except as provided in 50-20-507, a
8 physician or physician assistant may not perform an abortion on a minor unless the physician or physician
9 assistant or the agent of the physician or physician assistant first obtains the ~~notarized written~~ consent of a
10 parent or legal guardian of the minor.

11 (2) The consent of a parent or legal guardian of the minor is invalid unless it is obtained in the
12 manner and on the form prescribed by 50-20-505."
13

14 **Section 6.** Section 50-20-505, MCA, is amended to read:

15 **"50-20-505. Consent form -- disclosure -- requirements for validity.** (1) The department of public
16 health and human services shall create a consent form to be used by physicians, physician assistants, or their
17 agents in obtaining the consent of a parent or legal guardian as required under 50-20-504 or in obtaining the
18 waiver of the consent of a parent or legal guardian as provided for in 50-20-507.

19 (2) The form must disclose but is not limited to the following:

20 (a) any information that a physician or physician assistant is required by law to provide to the minor
21 and the rights of the minor;

22 (b) the rights of the parent or legal guardian;

23 (c) the surgical or medical procedures that may be performed on the minor;

24 (d) the risks and hazards related to the procedures planned for the minor, including but not limited
25 to the risks and hazards associated with:

26 (i) any surgical, medical, or diagnostic procedure, including the potential for infection, blood clots
27 in veins and lungs, hemorrhage, and allergic reactions;

28 (ii) a surgical abortion, including hemorrhage, uterine perforation or other damage to the uterus,

1 sterility, injury to the bowel or bladder, a potential hysterectomy caused by a complication or injury during the
2 procedure, and the possibility of additional procedures being required because of failure to remove all products
3 of conception;

4 (iii) a medical or nonsurgical abortion, including hemorrhage, sterility, the continuation of the
5 pregnancy, and the possibility of additional procedures being required because of failure to remove all products
6 of conception; and

7 (iv) the particular procedure that is planned for the minor, including cramping of the uterus, pelvic
8 pain, infection of the female reproductive organs, cervical laceration, incompetent cervix, and the requirement
9 of emergency treatment for any complications; and

10 (e) the common risks and complications associated with carrying the pregnancy to full term.

11 (3) The form must include:

12 (a) a minor consent statement that the minor is required to sign. The minor consent statement
13 must include but is not limited to the following points, each of which must be initialed by the minor:

14 (i) the minor understands that the physician or physician assistant is going to perform an abortion
15 on the minor and that the abortion will end the minor's pregnancy;

16 (ii) the minor is not being coerced into having an abortion, the minor has the choice not to have the
17 abortion, and the minor may withdraw consent at any time prior to the abortion;

18 (iii) the minor consents to the procedure;

19 (iv) the minor understands the risks and hazards associated with the surgical or medical
20 procedures planned for the minor;

21 (v) the minor has been provided the opportunity to ask questions about the pregnancy, alternative
22 forms of treatment, the risk of nontreatment, the procedures to be used, and the risks and hazards involved;
23 and

24 (vi) the minor has sufficient information to give informed consent.

25 (b) a parental consent statement that a parent or legal guardian is required to sign. The parental
26 consent statement must include but is not limited to the following points, each of which must be initialed by a
27 parent or legal guardian:

28 (i) the parent or legal guardian understands that the physician or physician assistant who signed

1 the physician declaration statement provided for in subsection (3)(c) is going to perform an abortion on the
2 minor that will end the minor's pregnancy;

3 (ii) the parent or legal guardian had the opportunity to read the consent form or had the
4 opportunity to have the consent form read to the parent or legal guardian;

5 (iii) the parent or legal guardian had the opportunity to ask questions of the physician or physician
6 assistant or the agent of the physician or physician assistant regarding the information contained in the consent
7 form and the surgical and medical procedures to be performed on the minor;

8 (iv) the parent or legal guardian has been provided sufficient information to ~~give informed consent~~
9 consult with the minor as to the risks and complications associated with abortion and pregnancy.

10 (c) a physician declaration that the physician or physician assistant is required to sign, declaring
11 that:

12 (i) the physician or physician assistant ~~or the agent of the physician or physician assistant~~
13 explained the procedure and contents of the consent form to the minor and a parent or legal guardian of the
14 minor and answered any questions;

15 (ii) the physician or physician assistant explained any risks or complications associated with
16 abortion and pregnancy that involve the minor's specific circumstances to the minor and the parent or legal
17 guardian of the minor and answered any questions;~~and~~

18 ~~(ii)(iii)~~ (iii) to the best of the physician's or physician assistant's knowledge, the minor ~~and a parent or~~
19 ~~legal guardian of the minor have~~ has been adequately informed and ~~have consented to the~~ consented to the
20 surgical and medical procedure to be performed on the minor ~~abortion~~; and

21 (iv) to the best of the physician's or physician assistant's knowledge, the parent or legal guardian of
22 the minor has been adequately informed and consulted regarding the minor's decision to seek an abortion.

23 (d) a signature page for a parent or legal guardian of the minor that must be notarized and that
24 includes an acknowledgment by the parent or legal guardian affirming that the parent or legal guardian is the
25 minor's parent or legal guardian."
26

27 **Section 7.** Section 50-20-506, MCA, is amended to read:

28 **"50-20-506. Proof of identification and relationship to minor -- retention of records.** (1) A parent

1 or legal guardian of a minor who is consenting to the performance of an abortion on the minor shall provide ~~the~~
2 ~~attending~~ sufficient information to the physician or physician assistant or the agent of the physician or physician
3 assistant ~~with government-issued~~ establishing proof of identity and ~~written documentation that establishes that~~
4 ~~the parent or legal guardian is the lawful parent or legal guardian of the minor~~ proof of relationship to the minor
5 so that the consent form required by 50-20-505 substantially complies with the identification requirements of 1-
6 5-603.

7 (2) A physician or physician assistant shall retain the completed consent form and the documents
8 provided pursuant to subsection (1) in the minor's medical file for 5 years after the minor reaches 18 years of
9 age, but in no event less than 7 years.

10 (3) A physician or physician assistant receiving documentation under this section shall execute for
11 inclusion in the minor's medical record an affidavit stating: "I, (insert name of physician or physician assistant),
12 certify that according to my best information and belief, a reasonable person under similar circumstances would
13 rely on the information presented by both the minor and the minor's parent or legal guardian as sufficient
14 evidence of identity and relationship."
15

16 NEW SECTION. Section 8. Appropriation. (1) There is appropriated \$1,000 from the general fund to
17 the department of public health and human services for the biennium beginning July 1, 2023.

18 (2) The appropriation must be used to pay for the costs associated with providing the consent form
19 described in [section 6].

20 (3) The legislature intends that the appropriation provided for in this section is a one-time-only
21 appropriation.
22

23 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2023.

24 - END -